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| Schedule 3: Custom Terms and Conditions |

**NOTICE TO BUYER**: Buyer may have additional obligations to Seller under the terms and conditions set forth on this Schedule 3 (collectively, the “Schedule 3 Terms”). Please note that (i) Aptitude has not negotiated or approved the Schedule 3 Terms, and (ii) Buyer has the ability to negotiate the Schedule 3 Terms to suit Buyer's specific needs.

Significantly, Buyer should be aware there may be inconsistencies between the terms and conditions within the Addendum and the Schedule 3 Terms. As such, Buyer may want to retain its own legal counsel when negotiating the Schedule 3 Terms.

# ADDENDUM TO AGREEMENT

The following terms and conditions are incorporated into and form a part of the agreement to which they are attached (**Agreement**) for all purposes. **University** means The University of Texas Southwestern Medical Center. **Contractor** means \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**Representations and Warranties by Contractor.** Contractor represents and warrants Contractor is duly organized, validly existing and in good standing under the laws of the state of its organization; it is duly authorized and in good standing to conduct business in the State of Texas; it has all necessary power and has received all necessary approvals to execute and deliver this Agreement; and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.

**Tax Certification.** If Contractor is a taxable entity as defined by [Chapter 171, *Texas Tax Code*](http://www.statutes.legis.state.tx.us/Docs/TX/htm/TX.171.htm), then Contractor certifies it is not currently delinquent in the payment of any taxes due under Chapter 171, Contractor is exempt from the payment of those taxes, or Contractor is an out‑of‑state taxable entity that is not subject to those taxes, whichever is applicable.

**Payments.** University will pay Contractor for goods and services in accordance with [Chapter 2251, *Texas Government Code*](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2251.htm). University (a state agency) is exempt from Texas Sales & Use Tax on goods and services in accordance with [§151.309, *Texas Tax Code*](http://www.statutes.legis.state.tx.us/Docs/TX/htm/TX.151.htm#151.309)*,* and [Title 34 *Texas Administrative Code* (TAC) §3.322](http://texreg.sos.state.tx.us/public/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=34&pt=1&ch=3&rl=322).

**Payments by Electronic Funds Transfer.** [§51.012, *Texas Education Code*](http://www.statutes.legis.state.tx.us/Docs/ED/htm/ED.51.htm#51.012), authorizes University to make payments through electronic funds transfer methods. Contractor agrees to accept payments from University through those methods, including the automated clearing house system (ACH). Contractor agrees to provide Contractor’s banking information to University in writing on Contractor letterhead signed by an authorized representative of Contractor. Prior to the first payment, University will confirm Contractor’s banking information. Changes to Contractor’s bank information must be communicated to University in writing at least thirty (30) days before the effective date of the change and must include an IRS Form W-9 signed by an authorized representative of Contractor.

**Payment of Debt or Delinquency to the State.** Pursuant to §§[2107.008](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2107.htm#2107.008) and [2252.903](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2252.htm#2252.903), *Texas Government Code*, Contractor agrees any payments owing to Contractor under this Agreement may be applied directly toward any debt or delinquency Contractor owes the State of Texas or any agency of the State of Texas, regardless of when it arises, until paid in full.

University is required to validate compliance on a periodic basis with applicable Payment Card Industry Data Security Standards (**PCI DSS**), including Payment Application Data Security Standards (**PA DSS**), promulgated by the Payment Card Industry Security Standards Council (**PCI SSC**). The compliance validation process requires University to undergo an assessment of (1) system components used to process, store or transmit cardholder data, and any other components that reside on the same network segment as those system components, as well as (2) related processes used to process, store or transmit cardholder data, (**System Components in Scope**). Some or all System Components in Scope have been outsourced to Contractor under this Agreement. Contractor will cause its agents and subcontractors to comply with all terms of this Section applicable to Contractor. Contractor will achieve and maintain compliance under the current versions of PCI DSS and PA DSS published on the PCI SSC website for service providers and payment applications. Contractor will provide to University (1) on or before the date this Agreement is signed by University, and (2) within ten (10) days after each anniversary of the date this Agreement is signed by University, a copy of Contractor’s annual attestation of compliance signed by a Qualified Security Assessor (**QSA**) as more particularly described on the PCI SSC website.

If Contractor is unable to provide the required attestations of compliance, Contractor will permit University or University’s QSA to assess all System Components in Scope that are hosted or managed by Contractor or by Contractor’s agents or subcontractors. Contractor will create and maintain reasonably detailed, complete and accurate documentation describing the systems, processes, network segments, security controls, and dataflow used to receive, transmit, store and secure cardholder data. The documentation will conform to the most current version of PCI DSS. Contractor will, upon written request by University, make the documentation and the individuals responsible for implementing, maintaining and monitoring System Components in Scope available to (1) QSAs, forensic investigators, consultants and attorneys retained by University to facilitate the validation of University’s PCI DSS compliance, and (2) University’s information technology, information security, audit, compliance and other staff.

Contractor will retain the documentation for at least one (1) year after termination of this Agreement.]

**Texas Family Code Child Support Certification.** Pursuant to [§231.006, *Texas Family Code*](http://www.statutes.legis.state.tx.us/Docs/FA/htm/FA.231.htm#231.006), Contractor certifies it is not ineligible to receive the award of or payments under this Agreement, and acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

**Contractor Certification regarding Boycotting Israel.** Pursuant to [Chapter 2271, *Texas Government Code*](https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2271.htm), Contractor certifies Contractor (1) does not currently boycott Israel; and (2) will not boycott Israel during the Term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

**Contractor Certification regarding Business with Certain Countries and Organizations.** Pursuant to [Subchapter F, Chapter 2252, *Texas* *Government Code*](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2252.htm#F), Contractor certifies Contractor is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

**Contractor Verification Regarding Discrimination Against Firearm Entities or Trade Associations**. Pursuant to [Chapter 2274, *Texas Government Code*](https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2274.htm), Contractor verifies (1) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) it will not discriminate during the term of this Agreement against a firearm entity or firearm trade association. Contractor acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate.

**Contractor Verification Regarding Boycotting Energy Companies**. Pursuant to [Chapter 2276, *Texas Government Code*](https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2276.htm), Contractor verifies (1) it does not boycott energy companies and (2) it will not boycott energy companies during the term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate.

**Contractor Certification Regarding COVID-19 Vaccination**. Pursuant to [Section 161.0085, *Texas Health and Safety Code*](https://statutes.capitol.texas.gov/Docs/HS/htm/HS.161.htm#161.0085) *(enacted by* [*SB 968, 87th Texas Legislature, Regular Session (2021)*](https://capitol.texas.gov/BillLookup/History.aspx?LegSess=87R&Bill=SB968)*)*, Contractor certifies that it does not require a customer to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from Contractor’s business. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

**Access by Individuals with Disabilities.** Contractor represents and warrants (**EIR Accessibility Warranty**) the electronic and information resources and all associated information, documentation, and support Contractor provides to University under this Agreement (**EIRs**) comply with applicable requirements in [1 TAC Chapter 213](http://texreg.sos.state.tx.us/public/readtac%24ext.ViewTAC?tac_view=4&ti=1&pt=10&ch=213) and [1 TAC §206.70](http://texreg.sos.state.tx.us/public/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=1&pt=10&ch=206&rl=70) (ref. [Subchapter M, Chapter 2054, *Texas Government Code*](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2054.htm#M)). To the extent Contractor becomes aware the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Contractor represents and warrants it will, at no cost to University, either (1) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty or (2) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty. If Contractor fails or is unable to do so, University may terminate this Agreement and, within thirty (30) days after termination, Contractor will refund to University all amounts University paid under this Agreement. Contractor will provide all assistance and cooperation necessary for performance and documentation of accessibility testing, planning, and execution criteria conducted by University or University’s third party testing resources, as required by [1 TAC §213.38(g)](http://texreg.sos.state.tx.us/public/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=1&pt=10&ch=213&rl=38).

**Notices.** Except as otherwise provided by this Section, notices, consents, approvals, demands, requests or other communications provided or permitted under this Agreement, will be in writing and sent via certified mail, hand delivery, overnight courier, facsimile transmission (to the extent a facsimile number is set forth below), or email (to the extent an email address is set forth below) as provided below, and notice will be deemed given (i) if delivered by certified mail, when deposited, postage prepaid, in the United States mail, or (ii) if delivered by hand, overnight courier, facsimile (to the extent a facsimile number is set forth below) or email (to the extent an email address is set forth below), when received:

 If to University: The University of Texas Southwestern Medical Center

 5323 Harry Hines Boulevard

 Dallas, TX 75390

 Fax: 214-648-6048

 Email: Contracts@UTSouthwestern.edu

 Attn: Senior Manager, Legal Contracts Services

 If to Contractor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Fax: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attention: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

or other person or address as may be given in writing by either party to the other in accordance with this Section.

**Venue; Governing Law.** Dallas County, Texas, will be the proper place of venue for suit on or in respect of this Agreement. This Agreement, all of its terms and conditions, all rights and obligations of the parties, and all claims arising out of or relating to this Agreement, will be construed, interpreted and applied in accordance with, governed by and enforced under, the laws of the State of Texas.

**Breach of Contract Claims.** To the extent that [Chapter 2260, *Texas Government Code*](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2260.htm), is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, will be used by University and Contractor to attempt to resolve any claim for breach of contract made by Contractor that cannot be resolved in the ordinary course of business. The chief business officer of University will examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve the claims. The parties specifically agree (i) neither execution of this Agreement by University nor any other conduct, action or inaction of any representative of University relating to this Agreement constitutes or is intended to constitute a waiver of University’s or the state's sovereign immunity to suit; and (ii) University has not waived its right to seek redress in the courts.

**Entire Agreement; Modifications.** This Agreement supersedes all prior agreements, written or oral, between Contractor and University and will constitute the entire Agreement and understanding between the parties with respect to its subject matter. This Agreement and each of its provisions will be binding upon the parties, and may not be waived, modified, amended or altered, except by a writing signed by University and Contractor.

**Loss of Funding.** Performance by University under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (**Legislature**) and/or allocation of funds by the Board of Regents of The University of Texas System (**Board**). If Legislature fails to appropriate or allot necessary funds, or Board fails to allocate necessary funds, then University will issue written notice to Contractor and University may terminate this Agreement without further duty or obligation. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond University’s control.

**State Auditor’s Office.** Contractor understands acceptance of funds under this Agreement constitutes acceptance of authority of the Texas State Auditor's Office or any successor agency (**Auditor**), to conduct an audit or investigation in connection with those funds (ref. §§[51.9335(c)](http://www.statutes.legis.state.tx.us/Docs/ED/htm/ED.51.htm#51.9335), [73.115(c)](http://www.statutes.legis.state.tx.us/Docs/ED/htm/ED.73.htm#73.115) and [74.008(c)](http://www.statutes.legis.state.tx.us/Docs/ED/htm/ED.74.htm#74.008), *Texas Education Code*). Contractor agrees to cooperate with Auditor in the conduct of the audit or investigation, including providing all records requested. Contractor will include this provision in all contracts with permitted subcontractors.

**Premises Rules/IntelliCentrics**. If this Agreement requires Contractor’s presence on UT Southwestern University Hospital’s and Clinic’s facilities, Contractor agrees to cause its employees, representatives, agents, and subcontractors (“Contractor Representatives”) to become aware of, fully informed about, and in full compliance with all applicable Hospital policies, including those relative to personal health, security, environmental quality, safety, fire prevention, noise, smoking, and access restriction. Additionally, as determined by Hospital administration, and in accordance with the nature of the services to be provided, Contractor Representatives may be required to: (1) be approved by Intellicentrics.com; (2) badge in through the University’s Kronos timekeeping system; or (3) register with the Hospital’s manual sign-in log, prior to being given access to UT Southwestern University Hospitals and Clinics. Contractor Representatives who do not comply may face disciplinary action including, but not limited to a six month suspension from conducting on-site business.

**Force Majeure.** Neither party hereto will be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character (“**force majeure occurrence**”). Provided, however, in the event of a force majeure occurrence, Contractor agrees to use its best efforts to mitigate the impact of the occurrence so that University may continue to provide services during the occurrence.

**Limitations.** The Parties are aware there are constitutional and statutory limitations (**Limitations**) on the authority of University (a state agency) to enter into certain terms and conditions that may be part of this Agreement, including terms and conditions relating to liens on University’s property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys’ fees; dispute resolution; indemnities; and confidentiality, and terms and conditions related to Limitations will not be binding on University except to the extent authorized by the laws and Constitution of the State of Texas.

**Ethics Matters;** **No Financial Interest.** Contractor and its employees, agents, representatives and subcontractors have read and understand University’s Conflicts of Interest Policy and University’s Standards of Conduct Guide at <https://www.utsouthwestern.edu/about-us/administrative-offices/purchasing/supplier/>, and applicable state ethics laws and rules at <https://www.utsystem.edu/offices/systemwide-compliance/ethics>. Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause University employees to violate University’s Conflicts of Interest Policy, University’s Standards of Conduct Guide, or applicable state ethics laws or rules. Contractor represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

**Press Releases.** Except when defined as part of the Work, Contractor will not make any press releases, public statements, advertisement or other promotional materials using the name or logo of University or the name of any University employee, or referring to the Agreement or the engagement of Contractor as an independent contractor of UT Southwestern, or the purchase of goods or services by University, without the prior written approval of UT Southwestern. Requests for prior written approval of any such releases, public statements, advertisements or other promotional materials must be directed to University’s Executive Vice President for Institutional Advancement.

**Public Information.** University strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the *Texas Public Information Act* (**TPIA**), [Chapter 552, *Texas Government Code*](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.552.htm). In accordance with §§[552.002](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.552.htm#552.002) and [2252.907](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2252.htm#2252.907), *Texas Government Code*, and at no additional charge to University, Contractor will make any information created or exchanged with University pursuant to this Agreement (and not otherwise exempt from disclosure under TPIA) available in a format reasonably requested by University that is accessible by the public**.**

**Subcontracting.** Contractor will use good faith efforts to subcontract work performed under this Agreement in accordance with the Historically Underutilized Business Subcontracting Plan (**HSP**)). Except as specifically provided in the HSP, Contractor will not subcontract any of its duties or obligations under this Agreement, in whole or in part. This Agreement is subject to [34 TAC §20.285](http://texreg.sos.state.tx.us/public/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=34&pt=1&ch=20&rl=285). Contractor will comply with all of its duties and obligations under [34 TAC §20.285](http://texreg.sos.state.tx.us/public/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=34&pt=1&ch=20&rl=285). In addition to other rights and remedies, University may exercise all rights and remedies authorized by [34 TAC §20.285](http://texreg.sos.state.tx.us/public/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=34&pt=1&ch=20&rl=285).

**Texas Public Information Act - Subchapter J Requirements.** Pursuant to [Section 552.372 of the *Texas Government Code*](https://statutes.capitol.texas.gov/Docs/GV/htm/GV.552.htm#552.372), Contractor must:

(1) preserve all contracting information (ref. [Section 552.003(1-a), *Texas Government Code*](https://statutes.capitol.texas.gov/Docs/GV/htm/GV.552.htm#552.003)) related to this Agreement as provided by the records retention requirements applicable to University for the duration of this Agreement;

(2) promptly provide to the University any contracting information related to this Agreement that is in the custody or possession of Contractor on request of the University; and

(3) on completion of this Agreement, either:

(A) provide at no cost to the University all contracting information related to this Agreement that is in the custody or possession of Contractor, or

(B) preserve the contracting information related to this Agreement as provided by the records retention requirements applicable to the University.

The requirements of [Subchapter J, Chapter 552, *Government Code*](https://statutes.capitol.texas.gov/Docs/GV/htm/GV.552.htm#J) (“Subchapter J”) may apply to this Agreement and Contractor agrees that the Agreement can be terminated if Contractor knowingly or intentionally fails to comply with a requirement of Subchapter J.

University may not accept a bid for a contract described by [Section 552.371, *Texas Government Code*](https://statutes.capitol.texas.gov/Docs/GV/htm/GV.552.htm#552.371) or award the contract to an entity that the University has determined has knowingly or intentionally failed to comply with Subchapter J in a previous bid or contract described by Section 552.371 unless the University determines and documents that the entity has taken adequate steps to ensure future compliance with the requirements of Subchapter J.

If Contractor fails to comply with the requirements of Subchapter J applicable to Contractor, then University shall provide written notice to Contractor stating the requirement(s) of Subchapter J that Contractor has violated. Such notice will also advise Contractor that University may terminate this Agreement without further obligation to Contractor if (a) Contractor does not cure the violation on or before the 10th business day after the date the University provides the notice, (b) the University determines that Contractor has intentionally or knowingly failed to comply with a requirement of that Subchapter J, and (c) the University determines that Contractor has not taken adequate steps to ensure future compliance with the requirements of Subchapter J. For purposes of the above, Contractor has taken adequate steps to ensure future compliance with Subchapter J if: (1) Contractor produces contracting information requested by the University that is in the custody or possession of Contractor not later than the 10th business day after the date the University makes the request and (2) Contractor establishes a records management program to enable Contractor to comply with Subchapter J.

**Non-Solicitation.** Contractor agrees that, during the term of this Agreement and for a period of one (1) year following termination, Contractor will not, directly or indirectly, solicit or offer employment to any employee of University who has worked within the University facilities for which Contractor has provided goods or services.

**Consignment and Instrumentation:** To the extent that Products are consigned to University and/or instrumentation is loaned by Vendor, University shall have no ownership interest in any loaned non-disposable instrumentation. University shall be responsible for any loss of or damage to the Instrumentation and agrees to replace at prevailing list price less 30% for such item. Upon expiration or termination of this Agreement, Instrumentation shall be removed from University and returned at Vendor’s expense. All instruments utilized during procedures will be at "no charge" to University during term of Agreement. Instrumentation shall remain the property of Vendor and University accept the risk of loss for missing instrumentation.

**Wasted implants:** University (facility staff error, drop, etc.) will be discounted 50% off contracted price, provided that Vendor must not be required to sell any Product below Vendor's cost. Implants opened under surgeon's order and implanted then explanted, will be priced at 50% off contracted price, provided that vendor must not be required to sell any product below Vendor's cost. Implants opened by the Vendor Representative but not used, will bet the responsibility of Vendor.

**New Technology/Products:** In the event that new products and/or technology become available during the Term of this Agreement, those products may be added, at the discretion of University, to this Agreement. If University approves inclusion of new products and/or technology, this Agreement must be amended to add new products and/or technology to **the Pricing Exhibit** prior to any purchase or utilization of the new product or technology. In order have a new product or technology evaluated for addition to this agreement, Vendor must offer Universitya draft Amendment to add the new products and/or technology which reflects a discounted rate similar to the discounts listed for similar products already covered by this agreement~~.~~

1. Products and/or technology are required to follow hospital policies and procedures in order to be utilized in a clinical setting. Products and/or technology are not considered approved for use in a clinical setting until they have been vetted and approved by the University’s Clinical Value Analysis team. For questions regarding approval for use of product and/or technology within a UTSW Hospital or Clinic, please contact: UTVASC@UTSouthwestern.edu. New products or technology may only be purchased and utilized after approval from University’s Clinical Value Analysis team and execution of the offered Amendment. Failure to adhere to this process regarding new products and/or technology could be grounds for contract termination.

**Addendum Controlling.** If there is a conflict between the terms and conditions of the agreement to which this Addendum is attached and this Addendum, this Addendum controls.